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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,738	06/13/2001	Willis L. Winstrom	POC 01-1-1	4953

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SUITER WEST PC LLO  
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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/880,738	Applicant(s) WINSTROM, WILLIS L.	
	Examiner Neil Levy	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/23/04.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 301, 303, 304, 307-310, 322-333 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 301, 303, 304, 307-310, 322-333 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claims 301,303,304, 307-310 and 322-329 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Froberg- DD138273

The rejection of record is maintained- Froberg provides the instant granulated uncompacted antibiotic fermentation medium solids at the instant concentration, and enhanced with the pure form if necessary to provide desired potency, as a medicated animal feed supplement. As such, it is immediately envisioned as usable in methods to administer orally prophylactic or therapeutic antimicrobial levels. Preparation is as in the instant invention, non compacted drying , by spray drying, thus obviously of the instant non-critical size. Froberg also shows that the residual antibiotic/mycelium can be utilized in the method, thus enhancing economic feasibility (pg 8, top). Claims 322-333 would be prima facie obvious in light of this disclosure.

Claims 301,303,304,307-310,322-333 are\*\*\* rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for tetracyclines @ 10-300g/lb \*\*\*, does not reasonably provide enablement for other antibiotics and concentrations for treatment of animals. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. The specification specifically shows only chlortetracycline as prepared in claims 322-333, and at the claimed concentrations.

Applicant's arguments filed 1/23/04 have been fully considered but they are not persuasive. The arguments do not alter the fact that as claimed, Froberg meets the inventive concept- providing non-compact granules of fermentation solids of antibiotic. However, we do find that claims 322 & 329, if specifying at line 4, after the second "an" "a chlortetracycline", and incorporating the antibiotic concentration of 10-300g/lb, would overcome the prior art of record, and with cancellation of rejected claims , and then of claims 326,327 & 331, and amendment of antimicrobial to antibiotic in claims 328 , 332 & 333, & change of dependency to 322 & 329 would permit allowability.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on t-f from 7 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on 571-272-0602\*\*\*. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**NEIL S. LEVY**  
**PRIMARY EXAMINER**